

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

EMERSON SANDERS

v.

UNITED STATES AND  
DEPARTMENT OF THE TREASURY

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Civil No. CCB-13-891

**MEMORANDUM**

Now pending is the Government's motion for summary judgment. The court understands plaintiff Emerson Sanders' ("Sanders") complaint as a demand for a tax refund for 1995.<sup>1</sup> For the reasons stated below, the court determines that Sanders may not receive a tax refund for 1995.

Pursuant to 26 U.S.C. § 7422(a), a plaintiff must file a claim for refund with the Internal Revenue Service ("IRS") before filing a refund action in court. *See also United States v. Dalm*, 494 U.S. 596, 601–02 (1990) (explaining that the district court's jurisdiction to hear a refund suit is limited by § 7422(a)); *Beckwith Realty, Inc. v. United States*, 896 F.2d 860, 862 (4th Cir. 1990) ("Section 7422(a) requires the filing of a timely claim for refund before a district court can obtain jurisdiction over a tax refund action so that the [IRS] will have the opportunity to consider and dispose of a taxpayer's claim without the expense and time involved in litigating the suit."). The IRS has not received a refund claim from Sanders for tax year 1995. (Decl. of Robin Tate,

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<sup>1</sup> Sanders concedes that he is not entitled to tax refunds for 2002 to 2008. (*See* Pl.'s Resp., ECF No. 15, at 1.)

ECF No. 14-2, at ¶ 4.)<sup>2</sup> The court, therefore, does not have jurisdiction over Sanders' suit.<sup>3</sup> It will be dismissed by separate Order.

December 30, 2013

Date

/s/  
Catherine C. Blake  
United States District Judge

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<sup>2</sup> Sanders claims that, in 2011, he filed a 1995 tax return claiming a refund. (Pl.'s Resp. at 1; *see also* Decl. of Sanders, ECF No. 15, at ¶ 5.) But he submits only an unstamped copy of the 1995 tax return, which provides no indication as to whether it was received by the IRS. (See Pl.'s 1995 Tax Return, ECF No. 15-1, at 2–4.) Thus, Sanders' unsupported claim is insufficient to overcome the Government's evidence that the IRS has not, to date, received a claim for refund. Moreover, even if the court determined that there is a genuine dispute as to whether Sanders submitted a refund claim for 1995, he cannot maintain this suit due to the concept of "substantial variance." *See Lockheed Martin Corp. v. United States*, 39 Fed. Cl. 197, 201 (1997) (internal quotation marks omitted) (explaining that a plaintiff cannot claim at trial a refund "substantially varying" from the amount in the refund application); *see also Beckwith Realty, Inc.*, 896 F.2d at 862 (stating that, to satisfy § 7422(a), "the claim for refund must contain sufficient information" so that the IRS may respond fully to the plaintiff's claim). Sanders' 1995 tax return claimed only a \$230 refund; it did not claim a refund for any amounts collected by the IRS through levies. (See Pl.'s 1995 Tax Return at 3.) In any event, Sanders has already received credits for 1995 in excess of the \$230 refund he allegedly claimed. (See Gov't Ex. B, ECF No. 14-4.)

<sup>3</sup> The court notes that Exhibit A attached to Sanders' response contains his and his dependents' social security numbers. He should file a redacted copy of the exhibit.